



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc. Bail Application No. 8363/2024

Vikas S/o Samji @ Syamji, aged about 20 years, resident of Pratapnagar Samriya, Police Station Banswara, District Banswara (Raj.).

(Lodged in District Jail, Banswara)

----Petitioner

Versus

1. State of Rajasthan through PP
2. Duula Bhagora S/o Ramji Bhagora, R/o Samariya Sadar Banswara, District Banswara (Raj.).

----Respondents

For Petitioner(s) : Mr. P.R. Mehta

For Respondent(s) : Mr. Narendra Singh Chandawat, PP.

HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI

Order

Reportable

18/09/2024

1. Petitioner is lugged and locked in F.I.R No. 43/2024 of Police Station Sadar, District Banswara, for the offence under Section 302 of the I.P.C. He has filed this application for restoration of his liberty under Section 439 of the Code of Criminal Procedure, 1973 (Section 483 of BNSS).
2. According to the facts of the case, deceased Hiralal had attended a wedding in "Gadariapada Toraniya" village with his daughter Mangi. Mangi has been the root cause of the incident. A dance program was taking place during the wedding. Around 2:30-3:00 in mid-night while dancing, petitioner Vikash placed his hand on Mangi's shoulder, which was noticed by her father Hiralal.



Hiralal approached Mangi and asked why she was tarnishing his reputation, then took her away. Meanwhile, Vikash came running towards Heeralal, wearing safety shoes. Upon arriving, Vikash pushed Hiralal and kicked him in the stomach. Shortly after, Hiralal complained of being unable to pass urine. He was taken to Banswara hospital and later referred to Udaipur but he died two days later. When Vikash was attacking Hiralal, several people intervened and saved him.

3. Shri P.R. Mehta, learned counsel representing the petitioner vehemently urged that petitioner is innocent person and a false case has been foisted against him; that entire allegations so leveled by the police against the petitioner is totally false and baseless; that nothing has been recovered from possession of the petitioner; that there is no concrete evidence to show direct nexus between the petitioner and alleged crime, rather case of the prosecution is based on surmises and conjectures instead of sound legal evidence.

4. The learned counsel for the petitioner has relied heavily on the postmortem report and the Doctor's testimony, arguing that Hiralal's death was not caused by the blows and kicks inflicted by the petitioner with his hands and feet, but rather by surgical wounds. As per him, the postmortem revealed no marks of assault on the body of the deceased; that cause of death was "septicemic shock" resulting from peritoneum perforation; that the incident occurred due to sudden provocation and the petitioner could not have intended to cause Hiralal's death, he argued. He prayed that



considering the facts and circumstances, the petitioner may be released on bail.

5. From the other side, learned Public Prosecutor for the State has strongly objected the submissions made by learned counsel for the applicant and submitted that there is overwhelming evidence adduced on record which would *prima facie* point towards the guilt of the applicant; that keeping in view the gravity of offence alleged to have been committed by him, he does not deserves any leniency, rather he needs to be dealt with severely. He thus, prayed that in the facts of the present case, it is expedient that accused be kept in the custody.

6. I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and have perused the record carefully.

7. In view of above arguments, this Court is of the opinion that arguments advanced by learned counsel of petitioner is not tenable at this stage of consideration for bail to petitioner. Firstly, Hiralal taking his daughter Mangi away from the dance stage, after petitioner touching Mangi in public, could not have been considered sudden provocation for the petitioner. Rather, this could have caused a sudden provocation for Hiralal. Secondly, it is an established fact that at the time of the incident, the petitioner was wearing safety shoes and kicked the deceased in the stomach and private parts, which immediately caused Hiralal to experience urinary retention. It is pertinent to mention that safety shoes are typically designed with hard, protective materials such as metal toes or reinforced soles to safeguard the wearer from heavy



impacts or dangerous objects. In the present matter, petitioner has used his safety shoes as a weapon. Additionally, the PMR clearly states that two of the deceased's ribs were fractured. There is also a report from the trial court on record, which indicates that apart from the Doctor, the statements of two other witnesses, Mangi and Maku Ninama have also been recorded during the trial. However, the petitioner has failed to submit those statements and has only submitted the Doctor's statement.

8. Additionally, the statements of many eye-witnesses are still pending. The manner in which the petitioner, while wearing safety shoes, delivered kicks to Hiralal's stomach and private parts *prima facie* demonstrates his intent to cause Hiralal's death. It is not reasonable to believe that a person's death cannot result from kicks and punches, particularly in a situation where the accused, wearing safety shoes, kicks a person in the stomach and private parts.

9. It is not always necessary for the accused to use a deadly weapon or to attack upon a vital part of the body, such as head, to commit murder. However, safety shoes, when used as a weapon, can significantly increase the potential for inflicting serious or fatal injuries. The kick could rupture blood vessels, leading to internal bleeding, which may be fatal if not treated immediately.

10. Petitioner has *prima facie* intended to cause death or serious bodily harm by kicking the victim with safety shoes, this meets the *mens rea* requirement for murder. The hard and reinforced nature of safety shoes has act as a *de facto* weapon, increasing



the lethality of the assault. Therefore, this act of petitioner *prima facie* meets the ingredients of murder.

11. Having given anxious consideration to the rival submissions and having examined the record with reference to the law applicable, I am clearly of the view that though during the trial, the statement of Doctor Ashvin Patidar (PW-3) has been recorded but yet the statements of many other witnesses are yet to be recorded and prior to that, this Court is not inclined to grant indulgence of bail to the petitioner.

12. In view of the enormous *prima facie* material placed on record in respect of the applicant, the allegations leveled against the petitioner, I am of the considered view that looking to the nature and gravity of the accusation in the instant case, the role attributed to the petitioner, the case set up against petitioner in its entirety, the petitioner is not found entitled to be released on bail.

13. As a consequence of the above discussion, this Court is not inclined to extend indulgence of bail to the petitioners under Section 439 Cr.P.C. and hence, the instant Bail Application stands dismissed as being devoid of merit. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

(RAJENDRA PRAKASH SONI),J

Mohan/-